

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

| | | |
|-------------------------------|---|----------------------------------|
| In the Matter |) | CIV. NO. 03-00672 SOM/BMK |
| |) | (consolidated) |
| of |) | |
| |) | |
| The Complaint of MORNING STAR |) | ORDER REGARDING <u>LIVELY V.</u> |
| CRUISES, INC., a Hawaii |) | <u>WILD OATS MARKETS, INC.</u> |
| corporation, |) | |
| |) | |
| Petitioner, |) | |
| _____ |) | |
| |) | |
| SHIROH FUKUOKA, Individually |) | CIV. NO. 04-00588 SOM/BMK |
| and as Personal |) | (consolidated) |
| Representative of the ESTATE |) | |
| OF MITSUKO FUKUOKA, and as |) | |
| Next Friend of MIHO FUKUOKA, |) | ORDER REGARDING <u>LIVELY V.</u> |
| a Minor, |) | <u>WILD OATS MARKETS, INC.</u> |
| |) | |
| Plaintiffs, |) | |
| |) | |
| vs. |) | |
| |) | |
| MORNING STAR CRUISES, INC., a |) | |
| Hawaii Corporation; JOHN DOES |) | |
| 1-10; JANE DOES 1-10; DOE |) | |
| CORPORATIONS 1-10; DOE |) | |
| PARTNERSHIPS 1-10; DOE |) | |
| VENTURERS 1-10; DOE LIMITED |) | |
| LIABILITY ENTITIES 1-10; DOE |) | |
| GOVERNMENTAL ENTITIES 1-10; |) | |
| DOE UNINCORPORATED ENTITIES |) | |
| 1-10; AND OTHER DOE ENTITIES |) | |
| 1-10, |) | |
| |) | |
| Defendants, |) | |
| _____ |) | |

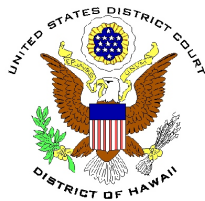
ORDER REGARDING LIVELY V. WILD OATS MARKETS, INC.


Earlier today, the Ninth Circuit issued a decision in Lively v. Wild Oats Markets, Inc., No. 04-56682, a copy of which is attached hereto. Lively held "that the forum defendant rule

is procedural, and therefore a violation of this rule is a waivable defect in the removal process that cannot form the basis for a district court's *sua sponte* remand order." Slip Op. at 8430. The parties should review the opinion in Lively and should make their own determinations as to whether it affects any issue in these consolidated cases.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, July 27, 2006.





Susan Oki Mollway
United States District Judge

In re Morning Star Cruises, et al., Civ. Nos. 03-00672 SOM/BMK and 04-00588
SOM/BMK; ORDER REGARDING LIVELY V. WILD OATS MARKETS, INC.